

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

August 24, 2005

| | | |
|-------------------------------------------|---|-------------------|
| IN RE: |) | |
| |) | |
| PETITION FOR AUTHORITY FOR ACCERIS |) | DOCKET NO. |
| MANAGEMENT AND ACQUISITION LLC TO |) | 05-00169 |
| ACQUIRE CERTAIN ASSETS OF ACCERIS |) | |
| COMMUNICATIONS CORP. |) | |

ORDER APPROVING TRANSFER

This matter came before Chairman Ron Jones, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on July 11, 2005 for consideration of the *Joint Petition for Approval to Acquire Assets and Request for Expedited Approval* (the "*Joint Petition*") filed by Acceris Management and Acquisition LLC ("Acceris") and Acceris Communications Corp. ("ACC" and collectively with Acceris, "Petitioners") for TRA approval of a transfer of certain assets, including, but not limited to, the subscriber base of ACC to Acceris.

The Joint Petition

Acceris is a limited liability company organized under the laws of the State of Minnesota and a wholly owned subsidiary of North Central Equity LLC. Acceris is not currently authorized to provide telecommunications services in any jurisdiction, but is in the process of obtaining authority to provide interexchange and/or local exchange telecommunications services throughout the United States.

ACC¹ is a Delaware corporation and a wholly owned subsidiary of Acceris Communications, Inc. ACC was authorized to provide interexchange services on August 1, 2000 in TRA Docket No. 00-00559.

On June 24, 2005, the Petitioners filed a *Joint Petition* seeking Authority approval of a transfer of all telecommunications assets and operations of ACC, including its Certificate of Public Convenience and Necessity (“CCN”), pursuant to Tenn. Code Ann. § 65-4-112(a) (2004), Tenn. Code Ann. § 65-4-113 (2004), and TRA Rule 1220-4-2-.56(2)(d).² The Petitioners assert that the proposed transaction will serve the public interest by enabling Acceris to achieve increased economies of scale.³ The Petitioners assert that more effective competition will ultimately lead to lower prices and the availability of more products and services to the public.⁴ According to the *Joint Petition*, the addition of Acceris’s management team will enable ACC to become a successful competitor in the telecommunications marketplace.⁵ The *Joint Petition* states that the transaction will be virtually transparent to ACC’s customers in terms of the services that they receive.⁶ The Petitioners maintain that there will be no rate increase within ninety (90) days following the transfer.⁷ In addition, the Petitioners have provided the Authority with a proposed customer notification letter.⁸

July 11, 2005 Authority Conference

The Petitioners submitted the *Joint Petition* pursuant to Tenn. Code Ann. § 65-4-112(a) (2004), Tenn. Code Ann. § 65-4-113 (2004), and TRA Rule 1220-4-2-.56(2)(d). Tenn. Code Ann. §

¹ On August 21, 2001, in TRA Docket No. 01-00697, the Authority issued an order authorizing PT-1 Counsel, Inc. to change its name to WorldxChange Corp. Thereafter, on December 2, 2003, in TRA Docket No. 03-00123, the Authority issued an order authorizing the Company to adopt Acceris Communications Partners and Acceris Communications Solutions as its “doing business as” names. In TRA Docket No. 04-00229, WorldxChange Corp. petitioned the Authority to change its name to Acceris Communications Corp. The matter is still pending before the Authority. WorldxChange Corp. has filed an application for an amended certificate of authority with the Secretary of State and registered its name change to Acceris Communications Corp. under control number 0390996.

² Data Response, p. 1 (July 5, 2005).

³ *Joint Petition for Approval to Acquire Assets and Request for Expedited Approval*, p. 4 (June 24, 2005).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 5.

⁷ Transcript of Authority Conference, p. 47 (July 11, 2005).

⁸ Data Response, (Exhibit A) (July 5, 2005).

65-4-112(a) (2004) governs TRA approval of mergers or consolidations between two or more public utilities in the State of Tennessee. It provides as follows:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights, and franchises of any other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state

The provision is not applicable here. The transfer of control of ACC to Acceris does not involve the lease, merger, or consolidation of property, rights, or franchises between two Tennessee public utilities.

Instead, the transfer at issue in this Docket is governed by Tenn. Code Ann. § 65-4-113 (2004). Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer . . .

Further, when a customer base is transferred from one telecommunications service provider to another, TRA Rule 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria have been met:

2. A notification letter, pre-approved by the Authority, shall be mailed by the current provider of telecommunications service to its customers describing the customer transfer and explaining that unless the

customer selects another telecommunications service provider, the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a date specified in the notification letter. The customer notification shall be mailed by U S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope, no less than thirty (30) days prior to the actual customer transfer. For good cause shown, the Authority may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider. Good cause includes, among other things, evidence that the current provider is no longer providing service in Tennessee.

3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4- 2- 56(2)(d)(2) shall inform the customer of this provision

At the regularly scheduled Authority Conference held on July 11, 2005, a majority⁹ of the panel found that the Petitioners have met the requirements of Tenn. Code Ann. § 65-4-113 (2004) and the customer notification letter complies with Rule 1220-4-2- 56(2)(d). The majority further found that, in reviewing the most recent Data Responses, Acceris has demonstrated that it is an ongoing concern and would have no problem serving its customers. Thereafter, a majority of the panel voted to grant approval of the *Joint Petition* contingent upon Acceris obtaining approval of its pleadings pending before the Federal Communications Commission ("FCC"). A majority of the panel ordered that the Company file with the Authority a copy of the approval of its FCC authorization upon receipt. Additionally, a majority of the panel ordered Acceris to mail the approved customer notification letter in accordance with TRA Rule 1220-4-2- 56(2)(d)(2) no later than August 1, 2005, and to file a copy of the customer notification letter and the corresponding envelope with the Authority.

⁹ Director Miller abstained from the vote

IT IS THEREFORE ORDERED THAT:

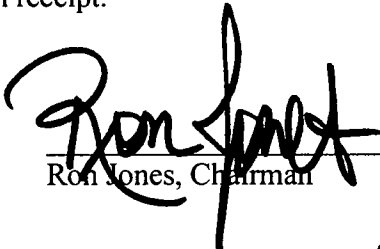
1. The proposed transfer as described in the *Joint Petition for Approval to Acquire Assets and Request for Expedited Approval* and discussed herein is approved contingent upon Acceris Management and Acquisition LLC obtaining approval of its pleadings pending before the Federal Communications Commission.

2 Acceris Management and Acquisition LLC shall notify existing customers of Acceris Communications Corp. of the transfer using a letter in accordance with TRA Rule 1220-4-2-.56(2)(d)(2) no later than August 1, 2005

3. The customer notification attached to the Data Response dated July 5, 2005 as Exhibit A in this Docket is approved.

4. Petitioners shall file a copy of the customer notification letter and the corresponding envelope with the Authority.

5. Petitioners shall file with the Authority a copy of the approval of its Federal Communications Commission authorization upon receipt.



Ron Jones, Chairman



Deborah Taylor Tate, Director

Pat Miller, Director